

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 462 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SATVARA AJA LAGHA

Versus

SATVARA KALA HIRA

Appearance:

MR GAURANG H BHATT for Petitioners
MR YS LAKHANI for Respondent No. 1
MR PRAVIN GONDALIYA for Respondent No. 10

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/06/98

ORAL JUDGEMENT

1. This appeal arises from the impugned order dated 7/8/1997 rendered by the learned Civil Judge [S.D.], Morbi in Special Civil Suit No. 25 of 1996. The said order has been passed below application exh. 5 moved by the plaintiffs (respondents herein) for obtaining interim injunction restraining the defendants from transferring

in any manner the suit property or any part thereof till the final disposal of the suit. It is not in dispute that the suit has been filed by the respondents for obtaining relief of partition alongwith other ancillary reliefs.

2. The suit has been based on the ground that the properties in question are co-parcenery properties and the plaintiffs should be awarded their respective shares as ascertained by the Court at the time of trial. The pedigree for the purpose of enabling adjudication into the matter has been set out. The same may be reproduced :-

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Jetha
/
Jeram
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      /      /      /
Bechar      Ranchhod      Deva
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/      /      /      /      /      /
Punja Kunvarji      Mulaji Ladha      Madha      Vira
| / / /      /      /
| -----      Anda      Aja Kama Kamalben
| / /      P-8 D-1 P-9 D-5
| Moti Govind /
| / / -----
| Kadva Velji / / /
| P-6 P-7 Mala Prabhu Ashok
| D-2 D-3 D-4
|
|
Hira
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/ / / / /
Kala Karmasi Keshavji      Kanji      Dhanji
[ Plaintiff nos.1 to 5 respectively.]
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3. After referring to the documentary evidence which has been placed on record and which includes revenue entries in the form of record of rights, the learned trial Judge has come to the conclusion that there is prima facie case in favour of the plaintiffs for rendering a prima-facie finding that the properties in question are co-parcenery properties or in any event the plaintiffs would have their shares therein upon succession. The learned trial Judge also made reference to the defence taken by the appellants (defendants) and he has come to the conclusion that in respect of thereof

evidence is required to be adduced. He has made a reference to the fact that the defendants did not place on record any documentary evidence to show that Aja Ladha exclusively got the land alleged to be originally belonging to Bechar Jeram. Hence, considering the prima-facie case as well as balance of convenience and the decision rendered by this Court in Ibrahimsha v/s. Noorahmed and ors. reported in 24 (2) G.L.R. 961, the learned trial Judge has granted interim injunction against the defendants from transferring the suit properties till the disposal of the suit. He observed that if such an injunction was not granted, it would result into multiplicity of proceedings.

4. I have heard the learned advocates appearing for the parties.

5. With regard to the observation of the learned trial Judge that the defendants (appellants herein) did not place on record any documentary evidence to show their exclusive right over property/properties in question, Mr. Gaurang Bhatt had shown to this Court a copy of the resolution passed by the Ex-Ruler on or around 24/6/1943. Having gone through the said copy of the resolution, I am of the opinion that it relates to the Ex-Ruler's right of recovering revenue and ascertainment of liability of the person to pay such revenue. That would not lead to adjudicating the rights in so far as the heirs of the concerned holder of the property were concerned. In any event the effect of the said resolution will have to be ascertained by the trial Court at the time of trial and no conclusive decision can be given at this stage.

6. It has next been contended by the learned advocate for the appellants that there were acquisition proceedings in the past with regard to portions of some of the properties in question and they resulted in passing of the award somewhere in the year 1993 in so far as three of the properties are concerned (survey nos. 27, 28/1 and 68/1). One of the four properties, namely portion of survey no. 37/1 came to be acquired somewhere in the year 1971-73 and the award was passed on 30/6/1973. It has been submitted from the proceedings of the acquisition that the compensation has been taken by the concerned defendants and the plaintiffs have never made any grievance with regard to their share of compensation at any stage of the acquisition proceedings. However, it cannot be said that the plaintiffs did not have any right over the portion of the properties acquired as per the aforesaid acquisition proceedings.

At best, the defendants can canvass the acquisition proceedings and the receipt of compensation by way of evidence in support of their stand that the properties were enjoyed by them and they held the same by way of adverse possession. Again the question is one of evidence at the time of trial.

7. It has then been submitted on behalf of the appellants that the learned trial Judge has failed to consider the entries of promulgation appearing at exh. 3/3 and 3/4 in xerox copies of Village Form No.6. They refer to old and new promulgations. The submission is that the plaintiffs did not object to or participate in the promulgation proceedings and, therefore, they should not be permitted to contend that the properties mutated upon the promulgation proceedings were the co-parcenary properties. Now on a reference to exh. 3/3 it appears that the name of Jeram Jetha appears against survey nos. 124, 135, 669 and 670. Then there is an endorsement indicating that further survey nos. are not legible and only the name of Bechar is legible. The next document is exh. 3/4. The xerox copy indicates that the name of Jeram Jetha has been mutated on the basis of succession.

Reference has also been made to mark 81/6 which refers to entries nos. 722, 773, 784, 810 and 1431. In the column of nature of right the word 'promulgation' appears in vernacular and in that column the name of defendant Aja Ladha has been recorded. It has been submitted on the basis of this document that the promulgation proceedings have resulted in mutation of the name of defendant Aja Ladha in respect of the properties in question. However, mutation of name of Aja Ladha in some promulgation proceedings will not abrogate or extinguish the rights of the plaintiffs or other heirs of Bechar Jeram. The promulgation proceedings are not placed on record. Therefore, this again would be a question to be decided at the time of trial.

8. Finally it has been submitted that the defendant no. 9, who has been subsequently added as party-defendant in the suit, has placed on record a copy of the sale-deed dated 13/7/1956 with regard to a house property which is not the subject matter of the suit. Reliance has been placed upon a recital to the effect that the property which is the subject matter of the said sale-deed, went to the share of this vendor (defendant no.9) in some partition. Now the partition has not been canvassed by the defendants in the present suit. It is no-doubt true that it would be open to the defendants to canvass partition whether oral or written or family

arrangement whether oral or written at or before the trial is undertaken by the learned trial Judge. However, that would again be a matter of evidence and it cannot be conclusively held that the defendants or any of them would be the exclusive owners of the properties in question.

9. Under the aforesaid circumstances, it cannot be found that the learned trial Judge has committed any error in granting interim injunction as aforesaid. The result is that this appeal would fail. The same is accordingly dismissed with no order as to cost.

Office to send back the record and proceedings to the trial Court, who will expeditiously hold the trial and dispose of the matter as expeditiously as possible.

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PVR**AO46297j.